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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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OCT 13 1999

**In the Matter of**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Replacement of Part 90 by Part 88 to Revise ) PR Docket No. 92-235**  
**the Private Land Mobile Radio Services and )**  
**Modify the Policies Governing Them )**

**and )**

**Examination of Exclusivity and Frequency )**  
**Assignment Policies of the Private Land )**  
**Mobile Radio Service )**

**To: The Commission**

**REPLY TO PARTIAL OPPOSITION TO  
PETITION FOR CLARIFICATION  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.429(g) of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby respectfully submits this Reply to the "Partial Opposition" of MRFAC, Inc. ("MRFAC") to API's Petition for Clarification of certain aspects of the *Second Memorandum Opinion and Order* ("Second MO&O") adopted by the Commission in the above-captioned proceeding on April 6, 1999.<sup>1/</sup>

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<sup>1/</sup> *Second MO&O*, 64 Fed. Reg. 36258 (July 6, 1999); Petitions for Reconsideration of *Second MO&O*, 64 Fed. Reg. 50090 (Sept. 15, 1999) (corrected Federal Register notice). Because MRFAC's Partial Opposition was filed on September 30, 1999 and was served on API by regular mail, API's Reply is due on October 13, 1999. See 47 C.F.R. §§ 1.4(h) and 1.429(g).

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## I. REPLY

1. In its Petition, API asked the Commission to clarify and confirm that the new coordination/concurrence procedures adopted in the *Second MO&O* with respect to channels previously assigned on either a shared or exclusive basis to the former Petroleum Radio Service may be implemented through the use of contour analysis and/or other measures deemed necessary by the responsible frequency coordinator to protect incumbent petroleum industry systems operating on these channels.<sup>2/</sup> API's request was based, in principal part, on the fact that the oil and gas industries must have reliable communications facilities to ensure the safety of their operations. The Commission has specifically and repeatedly recognized the special communications requirements of these industries in this and other proceedings. Moreover, the Commission acknowledged in its *Second MO&O* that API (in a prior Petition for Reconsideration) had raised "a legitimate safety issue" concerning incumbent operations on the formerly shared frequencies.<sup>3/</sup> Although the Commission sought to address this "legitimate safety issue" in its *Second MO&O*, API filed its recent Petition due to its concern that no specific criteria were provided for the coordination of applications for new conventional systems on channels previously assigned to the Petroleum Radio Service.

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<sup>2/</sup> See API's Petition for a more detailed discussion of the coordination criteria advocated by API.

<sup>3/</sup> *Second MO&O* at ¶ 9.

2. MRFAC's Partial Opposition "does not take issue with" the coordination criteria specified by API.<sup>4/</sup> Instead, MRFAC argues that the same criteria also should be applied with respect to manufacturers' radio systems.<sup>5/</sup> MRFAC fails to provide any evidence, however, that legitimate public safety concerns such as those identified by API (and recognized by the Commission) in regard to the petroleum industry warrant the adoption of such measures for systems employed by manufacturers. In the event that manufacturers or other industries were able to document such concerns to the Commission's satisfaction, API would not be opposed to the extension to such entities of the coordination criteria that API seeks to implement to protect incumbent petroleum systems.

3. MRFAC also claims that granting relief to API in the form requested "would create overnight an exclusive pool for pipelines et al [sic] on frequencies heavily shared with manufacturers."<sup>6/</sup> This statement is simply incorrect. Adoption of the coordination criteria proposed by API would not impact the many thousands of manufacturer radio systems already operating on the channels in question,<sup>7/</sup> nor would it provide API or its coordinator with the ability to approve only those new applications

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<sup>4/</sup> Partial Opposition at 2.

<sup>5/</sup> See id. at 4-5.

<sup>6/</sup> Id. at 3.

<sup>7/</sup> See id. at 5.

filed by petroleum entities.<sup>8/</sup> Rather, incumbent systems of all types would remain on these channels, and *any* proposed systems that do not infringe the suggested coordination criteria or that otherwise are shown not to create a risk of interference to incumbent petroleum systems could continue to be coordinated and licensed (provided that they satisfy all of the Commission's other licensing requirements). Only those proposed systems that would present a measurable risk of interference to incumbent petroleum systems -- and hence a threat to public safety -- would be precluded.

4. MRFAC further asserts that API's willingness to provide applicants with the opportunity to justify proposals that violate the coordination criteria is a mere "rhetorical flourish," with little practical value, due to the unacceptable delays that MRFAC believes would be involved in sorting out such matters.<sup>2/</sup> MRFAC's assertion is speculative, at best. API believes, by contrast, that the coordinators and impacted parties would be willing and able to work together to resolve any such issues in a timely manner. Should the Commission nevertheless be concerned about the potential for coordination delays, it need only adopt time guidelines for the resolution of any disputes that may arise under API's proposal.

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<sup>8/</sup> Indeed, petroleum industry applicants would be subject to the same criteria as manufacturers and other types of applicants.

<sup>2/</sup> Partial Opposition at 3.

## II. CONCLUSION

5. As API discussed in its Petition, coordination criteria must be established to protect the vital "public safety" communications systems employed by the oil and gas industries. MRFAC has failed to present the Commission with any reasonable grounds for declining to take such action. In fact, MRFAC essentially has expressed support for the proposed criteria in seeking to extend their application to existing manufacturers' radio systems. Accordingly, API urges the Commission to grant the relief requested by API in its Petition.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully requests the Commission to clarify its *Second MO&O* in this proceeding in the manner sought in API's Petition.

Respectfully submitted,

**AMERICAN PETROLEUM INSTITUTE**

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Dated: October 13, 1999

## **CERTIFICATE OF SERVICE**

I, Patt Meyer, a secretary in the law firm of Keller and Heckman LLP, hereby certify that on this 13<sup>th</sup> day of October, 1999, copies of the foregoing REPLY TO PARTIAL OPPOSITION TO PETITION FOR CLARIFICATION OF THE AMERICAN PETROLEUM INSTITUTE were served by first class mail, postage prepaid, on the party listed below:

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Patt Meyer